

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2002-698

November 26, 2002

PUBLIC UTILITIES COMMISSION  
Amendments to Section 11 of Chapter 81:  
Residential Utility Service Standards  
For Credit and Collection Programs

NOTICE OF RULEMAKING

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WELCH, Chairman; NUGENT AND DIAMOND, Commissioners

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**I. INTRODUCTION**

In this Notice, we open a limited rulemaking to amend § 11 of Chapter 81. The proposed amendment clarifies that there is no cumulative limit to the duration of a certified medical emergency by removing § 11(D)(2) and adding text to § 11(D)(1). These changes clarify that a medical emergency certification may be renewed as long as the medical emergency exists. The proposed amendment also eliminates an inconsistency between §§ 11(D)(2) and 11(G).

**II. BACKGROUND**

On August 5, 2002, Bangor Hydro-Electric Company (BHE) filed a request for clarification of a Commission Advisory Ruling concerning the medical emergency provision of Chapter 81, § 11. Bangor Hydro-Electric Company, Request for Advisory Ruling on Definition and Intent of the Meaning of Chapter 81, Section 11(B)(D)(G) and (H), Docket No. 96-653 (April 29, 1997). Bangor Hydro specifically sought clarification for item numbers 5(B) and 6(A) of the Advisory Ruling that addressed the requirement of § 11(D) of Chapter 81. In its request for clarification, BHE asked the following two questions:

- 1) In circumstances where a (sic) medical emergencies are declared within a 12 month period, exceed 90 days and involve multiple household members, is the utility required to extend the medical past 90 days to accommodate multiple household members (clarify Docket item # 5(B) of the Advisory Ruling); and
- 2) In circumstances where a medical emergency is declared and certified by the same individual and the 90 days has been previously exhausted, is the utility allowed to proceed with disconnection and disallow additional protection against disconnection for non-payment without seeking an exemption to Chapter 81, § 14(B)? (Clarify Docket item 6A of the Advisory Ruling)

Both of these questions involve the same issue: may a utility disconnect a customer after the 90-day limitation (within a 12-month period)<sup>1</sup> for medical emergencies is reached, if the customer continues to declare a medical emergency and either fails to comply with the terms of a payment arrangement or refuses to enter into a payment arrangement?

The Advisory Ruling provided, among other things, an interpretation of the provisions of Chapter 81 governing the length and renewal of medical emergencies. Specifically, item No. 5 of the Advisory Ruling addressed the length of renewal and renewal of medical emergencies and stated:

- A) At the end of a certification period (30 days or less, if specified by the certifying physician), the utility may proceed with the collections process, unless and until a new declaration or certification of a medical emergency is received;
- B) If the customer/occupant declares a medical emergency after the 90 days of certification in any 12-month period have expired, the utility may proceed with the collections process, SUBJECT, HOWEVER, TO A DECISION BY CAD THAT SPECIAL CIRCUMSTANCES REQUIRE AN EXCEPTION TO THE 90-DAY MEDICAL EMERGENCY LIMIT. Advisory Ruling, Docket No. 96-653 at 3.

It is the last sentence of item No. 5(B) that has created the confusion for which BHE seeks clarification. This sentence implies that utilities may disconnect customers (after the 90-day period) unless the Consumer Assistance Division (CAD) finds that special circumstances exist that would require an exemption to the 90-day limitation.<sup>2</sup> This seems to conflict with § 11(G) of Chapter 81 that states "...If a customer refuses to enter into a payment arrangement as a condition of renewal of the certification or fails to comply with a payment arrangement negotiated as a condition of renewal, the utility can disconnect service only by obtaining an exemption from the Commission according to Section 14(B)(2)." This section seems to prohibit the disconnection of a customer after the expiration of the 90-day period without an exemption from the Commission.

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<sup>1</sup> The Advisory Ruling specified that the 90-day time limitation applies to a 12-month period.

<sup>2</sup> The Advisory Ruling interpretation is contingent upon the CAD's awareness of every situation in which a medical emergency may extend beyond 90 days and the CAD's taking some sort of action to address the situation. There may be situations of which the CAD is unaware and therefore would not be prepared to intercede. In these situations, a customer with a medical emergency who may be dependent upon utility service for his well-being or survival could be disconnected without the CAD's knowledge. We find this possibility to be unacceptable.

Both § 11(G) of the rule and the Advisory Ruling, however, contemplate some sort of examination and approval by the Commission for the disconnection of a customer with a certified medical emergency after the expiration of the 90-day period. This action is not consistent with § 11(D)(2) of Chapter 81 that states a utility is not required to extend the combination of initial and renewed certifications beyond 90 days.

It has been the past practice of utilities not to disconnect a customer with a certified medical emergency, regardless of the number of times the medical emergency is renewed. However, BHE's request for clarification and subsequent discussions that the Director of the CAD has had with utilities indicate that some utilities may be considering changing this practice.<sup>3</sup> For this reason, we initiate this rulemaking to consider an amendment to Chapter 81, § 11 that would eliminate the 90-day duration limit for medical emergencies.

### III. PROPOSED AMENDMENT

Upon review, it appears that § 11(G) of Chapter 81 is inconsistent with § 11(D), as well as with the Advisory Ruling interpretation. Section 11(G) seems to require an exemption to allow the disconnection of a customer who has declared a medical emergency beyond the 90-day time limitation and has failed to enter into or comply with the terms of a payment arrangement. It is not clear, however, what section of Chapter 81 would be exempted. Section 11(D) specifically allows for the disconnection of customers with certified medical emergencies after the expiration of the 90-day duration limitation.

For this reason, we propose to amend to Chapter 81 to ensure that no person with a medical emergency that is certified by a physician be disconnected, regardless of the duration of the medical emergency, without careful examination by the Commission. In a recent rulemaking involving local telephone companies, we adopted a medical emergency provision with no time limitation for medical emergencies. MPUC Rules, ch. 290, § 15.

We therefore propose to revise the existing Chapter 81, § 11(D) to remove the 90-day limit for medical emergencies. The proposed revision will eliminate the inconsistency between §§ 11(D)(2) and 11(G) by removing the 90-day limit for medical emergencies, thereby clarifying that the exemption referenced in § 11(G) applies to § 11(D). This will require utilities to obtain an exemption from the Commission any time they wish to disconnect a customer with a certified medical emergency.

This raises another issue that we seek comment. What criteria should be used to evaluate waiver requests submitted pursuant to § 14(B)? Section 14(B) states that "[a]

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<sup>3</sup> Central Maine Power Company, Bangor Hydro-Electric Company, and Maine Public Service Company have agreed to a request by the Director of the CAD that they continue their practice of not disconnecting customers who have a certified medical emergency, regardless of the duration, pending the completion of this rulemaking.

utility may request a an exemption to any provision of this Chapter in any case involving an individual customer whose conduct and known financial condition pose a clear danger of substantial losses to the utility." In situations where a customer has a certified medical emergency and fails to comply with a payment arrangement negotiated as a condition of renewal of the medical emergency, the customer would seem to meet the criteria to allow for an exemption request under § 14(B). The granting of such request, however, may jeopardize the safety of the person for whom the medical emergency was declared, in conflict with the intent of the medical emergency provision of Chapter 81. In light of this apparent conflict, how should the Commission address such exemption requests?

#### **IV. FISCAL AND ECONOMIC EFFECTS**

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed rule is expected to be minimal. The Commission invites all interested parties to comment on the fiscal impact and all other implications of this rule.

#### **V. RULEMAKING PROCEDURES**

We have not scheduled a public hearing. If five or more interested persons request such a hearing, we will hold one. This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. Written comments must be filed no later than January 6, 2003, and should be sent to the Administrative Director, Maine Public Utilities Commission, 242 State Street, State House Station #18, Augusta, Maine 04333-0018. Please refer to Docket Number 99-826, when submitting comments.

Accordingly, we

#### **O R D E R**

1. That the Administrative Director shall notify the following of this rulemaking proceeding:

A. All electric, gas and water utilities certified to operate in the State of Maine;

B. All persons who have filed with the Commission within the past year a written request for copies of this or any other Notices of Rulemaking;

C. The Office of the Public Advocate;

2. That the Administrative Director shall send copies of this Notice of Rulemaking and attached rule to:

A. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and

B. Executive Director of the Legislative Council, State House Station 115, Augusta, Maine 04333 (20 copies).

Dated at Augusta, Maine this 26th day of November, 2002.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Nugent  
   Diamond